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KA LUNA HO'OMALU HANA LAULĀ

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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWÉ LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE COMMITTEE ON

CONSUMER PROTECTION & COMMERCE

FEBRUARY 4, 2024, 2:00 P.M.
CONFERENCE ROOM 329 AND VIA VIDEOCONFERENCE, STATE CAPITOL

H.B. 808

RELATING TO THE PROCUREMENT CODE

Chair Matayoshi, Vice Chair Chun, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 808.

The Department of Accounting and General Services (DAGS) appreciates the intent of the bill, which is to help government agencies address latent defects and offers the following **comments**:

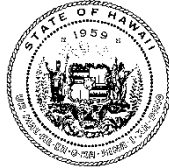
- We strongly recommend that research be conducted to determine if there are providers in the market that would cover construction latent defects and, if there are providers, what might the potential costs be for this additional layer of insurance on a per project basis.
- We have concerns that government agencies may be challenged when attempting to file claims because it may be difficult to prove that it was a

defect in construction that:

- could not have been discovered earlier; and/or
- was not a problem which resulted from the agency's maintenance of the facility; and/or
- could not be construed to be due to wear and tear.

DAGS would recommend that the issue be studied further to determine if there is any precedent for the requirement of such an insurance policy for construction and to ensure that a cost-benefit analysis indicates that such a requirement would be advantageous to the State.

Thank you for the opportunity to provide testimony on this measure.



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**TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION & COMMERCE
FEBRUARY 4, 2025, 2:00 PM**

**HOUSE BILL 808
RELATING TO THE PROCUREMENT CODE**

Chair Matayoshi, Vice Chair Chun, and members of the committee, thank you for the opportunity to submit testimony on House Bill 808. The State Procurement Office (SPO) provides comments on this bill.

The proposed amendments to Section 103D-324, Hawaii Revised Statutes (HRS), introduce requirements for public contractors to obtain insurance covering at least 50% of a project's construction costs and extend the State's ability to pursue claims for construction defects up to ten years after project completion. While the intent to enhance accountability and protect public funds is commendable, the proposed changes may have multiple unintended consequences that are not in the State's best interest. Those unintended consequences are as follows:

1. **Increased Costs for Contractors and the State.** Requiring contractors to obtain insurance covering 50% of construction costs could significantly increase insurance premiums, particularly in Hawaii's already high-cost construction environment. Contractors will likely pass these additional costs onto the State in the form of higher project bids, resulting in increased project costs and reduced funding available for other public priorities.
2. **Barrier to Small and Local Contractors.** This policy could disproportionately affect small and local contractors who may lack the financial capacity to secure extensive insurance coverage. These contractors may be excluded from public procurement opportunities, consolidating the market among larger, out-of-state firms, reducing competition, and ultimately driving up project costs further.

3. **Extended Liability Periods May Stifle Participation.** Extending the liability period for construction defects to ten years could discourage contractors from participating in State projects, especially for high-risk or complex infrastructure projects. The potential for prolonged legal exposure and uncertain costs over an extended period may deter contractors or lead them to inflate bids to mitigate these risks.
4. **Challenges in Insurance Market Availability.** The insurance market may not offer cost-effective policies that meet the requirements of the proposed legislation. If suitable insurance products are unavailable, contractors may face significant difficulties in complying with the law, potentially delaying or halting essential public works projects.
5. **Existing Legal Remedies and Oversight Mechanisms Are Adequate.** Hawaii's existing procurement code already provides mechanisms to ensure contractor accountability through performance bonds, payment bonds, and other safeguards. Adding overlapping requirements may create redundancy and administrative burdens for both contractors and the State without significantly enhancing protections.

Pursuant to HRS 103D-324 construction contracts \$25,000 or more are required to have a performance bond. The performance bond must be equal to one hundred percent of the amount of the contract.

6. **Administrative Burdens and Enforcement Challenges.** Managing and enforcing these insurance requirements would impose additional administrative burdens on the State's agencies. Verifying insurance coverage, addressing disputes, and managing claims could consume valuable resources.
7. **Potential for Legal Disputes and Increased Litigation.** The proposed changes may lead to increased litigation, particularly in disputes over what constitutes a construction defect or normal wear and tear. This could further strain the State's legal resources and delay resolutions for critical public infrastructure issues.

In conclusion, while the proposed amendments aim to address construction defects and ensure quality in public projects, their potential to increase costs, reduce competition, and impose administrative and legal burdens outweigh the anticipated benefits. A more balanced approach focusing on strengthening oversight, ensuring timely inspections, and enforcing existing requirements would better serve the State's interests without jeopardizing the viability and efficiency of public projects.

Thank you for the opportunity to submit testimony on this measure.



February 4, 2025

TO: HONORABLE SCOTT Z. MATAYOSHI, CHAIR, HONORABLE CORY M. CHUN, VICE CHAIR, COMMITTEE ON CONSUMER PROTECTION AND COMMERCE.

SUBJECT: **OPPOSITION TO H.B. 808, RELATING TO THE PROCUREMENT CODE.** Requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State to provide funds for curing construction defects discovered within ten years after the completion of the contract. Authorizes the State to institute an action against the contractor for the total costs of curing those defects.

HEARING

DATE: Tuesday, February 4, 2025
TIME: 2:00 p.m.
PLACE: Capitol Room 329

Dear Chair Matayoshi, Vice Chair Chun and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA is in **opposition** to H.B. 808, which requires public contractors to obtain insurance to cover at least half of a project's construction costs to the State, to provide funds for curing construction defects discovered within ten years after the completion of the contract. The measure also authorizes the State to institute an action against the contractor for the total costs of curing those defects.

GCA has two concerns. First, general liability insurance for "construction defects" is not currently commercially available now and is unlikely to be readily available soon. Second, the cost to have project specific general liability coverage with limits at 50% of project value that has a "completed operations" coverage period of 10 years will be extremely expensive. This will have the effect of raising the cost of construction, especially for the State and taxpayers.

Thank you for the opportunity to provide testimony on this measure.

SAH - Subcontractors Association of Hawaii

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February 4, 2025

Testimony To: House Committee on Consumer Protection & Commerce
Representative Scot Z. Matayoshi, Chair

Presented By: Tim Lyons, President

Subject: H.B. 808 – RELATING TO THE PROCUREMENT CODE

Chair Matayoshi and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following ten separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS ASSOCIATION OF HAWAII

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

HAWAII ARCHITECTURAL GLASS AND METAL ASSOCIATION

We are opposed to this bill.

We think this bill will be a real impediment to the continuing procurement of construction services for the State. Mandating a 50% insurance policy for half of the project, unfortunately does not make much sense in the construction world. There are many contractors that would not have the financial wherewithal in order to get a bond of that nature. Ultimately the insurance company would say, "If you want a 50% bond, put up the 50% cash for that bond".

While we would not claim that contractors are always innocent, we would say that if there are construction defects, they should have been noted during the construction process. That is what jobsite inspectors are there for. If there was a fault in the specs, again, that is what pre-conferences and plan review are all about to try to determine those defects. If it is just a material defect then again, the job site inspection should notice that.

We already hear from contractors on an almost weekly basis how puzzled they are as to why the State's requirements are so onerous. It seems to ensure that only certain contractors get the jobs because they are willing to put up with the system.

We think that a system that requires a 50% bond will so severely limit the profitability of the contractor that you will have even more of them decline to participate in State and County jobs.

Based on the above, we cannot support this bill.

Thank you.



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**HAWAII STATE HOUSE OF REPRESENTATIVES
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Conference Room 329 & Videoconference
State Capitol
2:00 PM**

FEBRUARY 4, 2025

Subject: HB808, RELATING TO PROCUREMENT

Chair Matayoshi, Vice Chair Chun, and members of the Committee:

My name is Roseann Freitas, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in opposition to HB 808, Relating to Procurement. This bill requires public contractors to obtain insurance to cover at least half of a project's construction costs to the state to provide funds for curing construction defects discovered within ten years after the completion of the contract, and authorizes the state to institute an action against the contractor for the total costs of curing those defects.

The bill requires general liability insurance coverage for construction defects, but such coverage is not currently commercially available. As such, mandating an unavailable product creates an impossible compliance burden for contractors and developers. The proposed requirement for project-specific general liability coverage with limits at 50% of the project value and a 10-year "completed operations" coverage period will impose extraordinarily high costs on construction projects. The expense associated with such coverage—if even obtainable—would significantly increase the cost of construction, affecting both public and private sector projects. Given that the State is a major purchaser of construction services, the increased costs stemming from this bill would directly raise the financial burden on taxpayers.

HB 808 would also conflict with existing statutes that already govern construction defect claims. By imposing additional insurance mandates that go beyond existing legal requirements, this bill would create unnecessary confusion.

We appreciate the opportunity to provide our comments on this matter.